

Department of Veterans Affairs

§ 3.323

impairment in earning capacity in civil occupations resulting from disability.

(Authority: 38 U.S.C. 1155)

(b) *Exceptional cases*—(1) *Compensation*. Ratings shall be based as far as practicable, upon the average impairments of earning capacity with the additional proviso that the Secretary shall from time to time readjust this schedule of ratings in accordance with experience. To accord justice, therefore, to the exceptional case where the schedular evaluations are found to be inadequate, the Under Secretary for Benefits or the Director, Compensation and Pension Service, upon field station submission, is authorized to approve on the basis of the criteria set forth in this paragraph an extra-schedular evaluation commensurate with the average earning capacity impairment due exclusively to the service-connected disability or disabilities. The governing norm in these exceptional cases is: A finding that the case presents such an exceptional or unusual disability picture with such related factors as marked interference with employment or frequent periods of hospitalization as to render impractical the application of the regular schedular standards.

(2) *Pension*. Where the evidence of record establishes that an applicant for pension who is basically eligible fails to meet the disability requirements based on the percentage standards of the rating schedule but is found to be unemployable by reason of his or her disability(ies), age, occupational background and other related factors, the following are authorized to approve on an extra-schedular basis a permanent and total disability rating for pension purposes: the Veterans Service Center Manager; or where regular schedular standards are met as of the date of the rating decision, the rating board.

(3) *Effective dates*. The effective date of these extra-schedular evaluations granting or increasing benefits will be in accordance with § 3.400(b)(1) and (2) as to original and reopened claims and in accordance with § 3.400(o) in claims for increased benefits.

(c) *Advisory opinion*. Cases in which application of the schedule is not understood or the propriety of an extra-schedular rating is questionable may

be submitted to Central Office for advisory opinion.

CROSS REFERENCES: Effective dates; disability benefits. See § 3.400(b). Effective dates; increases. See § 3.400(o).

[26 FR 1583, Feb. 24, 1961, as amended at 29 FR 1463, Jan. 29, 1964; 37 FR 10442, May 23, 1972; 39 FR 5315, Feb. 12, 1974; 39 FR 32988, Sept. 13, 1974; 40 FR 57459, Dec. 10, 1975; 61 FR 20727, May 8, 1996]

§ 3.322 Rating of disabilities aggravated by service.

(a) *Aggravation of preservice disability*. In cases involving aggravation by active service, the rating will reflect only the degree of disability over and above the degree of disability existing at the time of entrance into active service, whether the particular condition was noted at the time of entrance into active service, or whether it is determined upon the evidence of record to have existed at that time. It is necessary to deduct from the present evaluation the degree, if ascertainable, of the disability existing at the time of entrance into active service, in terms of the rating schedule except that if the disability is total (100 percent) no deduction will be made. If the degree of disability at the time of entrance into service is not ascertainable in terms of the schedule, no deduction will be made.

(b) *Aggravation of service-connected disability*. Where a disease or injury incurred in peacetime service is aggravated during service in a period of war, or conversely, where a disease or injury incurred in service during a period of war is aggravated during peacetime service, the entire disability flowing from the disease or injury will be service connected based on the war service.

CROSS REFERENCES: Principles relating to service connection. See § 3.303. Aggravation of preservice disability. See § 3.306.

[26 FR 1583, Feb. 24, 1961]

§ 3.323 Combined ratings.

(a) *Compensation*—(1) *Same type of service*. When there are two or more service-connected compensable disabilities a combined evaluation will be made following the tables and rules prescribed in the 1945 Schedule for Rating Disabilities.